

## **THE MINUTES OF THE REGULAR MEETING OF JANUARY 24, 2019**

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, January 24, 2019, in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Ms. Kim Hoey-Stevenson - absent, Mr. Keller Hopkins, Ms. Holly Wingate, with Mr. Vincent Robertson – Assistant County Attorney, Ms. Janelle Cornwell – Director of Planning & Zoning, Mr. Jamie Whitehouse – Planning & Zoning Manager, and Ms. Jennifer Norwood – Planner I.

Motion by Ms. Wingate, seconded by Mr. Hopkins, and carried unanimously to approve the Agenda as posted. Motion carried 3-0.

Motion by Ms. Wingate, seconded by Mr. Hopkins, and carried unanimously to approve the Minutes of the December 20, 2018 Planning and Zoning Commission meeting. Motion carried 3-0.

### **OLD BUSINESS**

#### **2018-16 Charles H. Guy, IV**

A standard subdivision to divide 38.286 acres +/- into 13 single family lots to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County. The portion of property that is subject for the subdivision is lying on the south side of Waterview Road approximately 542 feet or miles east of Camp Arrowhead Road. Tax Parcel: 234-12.00-22.00 (portion of). Zoning District. AR-1 (Agricultural Residential District).

The Planning Commission discussed the application which has been deferred since January 10, 2019.

Ms. Wingate moved the Commission deny Preliminary Approval for Subdivision 2018-16 for Charles H. Guy, IV based upon the lack of a record in support of the application and for the following reasons:

1. In any subdivision application the applicant has the burden of showing that certain requirements of the Subdivision Code have been satisfied.
2. The applicant has not addressed the requirements of Section 99-9C of the Subdivision Code, which contains 17 items that must be considered in any subdivision application.
3. The applicant did not adequately address how the proposed subdivision is integrated into the existing terrain and surrounding landscape.
4. The applicant did not adequately address whether the proposed subdivision will adversely affect natural areas.
5. I am not satisfied that the applicant has adequately addressed whether the proposed subdivision will adversely affect area roadways or provide safe vehicular or pedestrian movement along adjacent roadways.

6. I am not satisfied that the applicant has adequately addressed how the proposed subdivision will affect wetlands, floodplains or area waterways.
7. The applicant did not adequately address the minimization of tree, vegetation and soil removal caused by the subdivision, or grade changes caused by the subdivision.
8. The applicant did not address how this proposed subdivision complies with the stated “Purpose” of the Subdivision Code to “promote and protect the health, safety, convenience, orderly growth and welfare of citizens of the County.”
9. The applicant did not adequately address the provision for sewage disposal. I am concerned that the applicant is proposing to add 13 new septic systems in an area along the Inland Bays where Sussex County is striving to eliminate on-site septic systems and improve water quality through central sewer.
10. In general, the applicant failed to make an adequate record in support of an approval of this subdivision.

Motion by Ms. Wingate, seconded by Mr. Hopkins and carried unanimously to deny Preliminary Approval for the reasons and conditions stated in the motion. Motion carried 3-0.

**C/U 2154 Arturo Granados-Gonzalez**

**An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for a concrete construction business with equipment storage to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 4.51 acres, more or less.** The property is lying at the southwest corner of Burbage Road and Jones Road, and on the south side of Burbage Road approximately 251 feet, and 401 feet west of Jones Road. 911 Address: N/A. Tax Parcels: 134-14.00-20.00, 20.03 & 20.04.

The Planning Commission discussed the application which has been deferred since January 10, 2019.

Ms. Wingate moved that the Commission recommend approval of Conditional Use 2154 for Arturo Granados-Gonzalez for a concrete construction business with equipment storage based on the record made during the public hearing and for the following reasons:

1. There is a need for this type of use in this area of Sussex County. The Applicant submitted information showing that this site is centrally located in an area where a lot of construction is underway.
2. There will be no retail sales or similar business conducted from the site. It will only be used for storage of concrete forms and equipment.
3. The Applicant has stated that all work is performed off-site, and that there will not be any dumping or storage of concrete or similar materials on the site.
4. The use does not require any regular deliveries during the day. The only traffic is typically in the morning and afternoon when employees take the equipment to off-site job locations.
5. With the conditions and limitations of this approval, the continuation of the use of the site for storage purposes will not adversely affect neighboring properties, roadways or traffic.

6. The applicant has stated that his company provides a service to the construction industry in Sussex County. This use is of a public or semi-public character that will benefit the residents and businesses of Sussex County.
7. This recommendation is subject to the following conditions;
  - A. This use shall be limited to the applicant's concrete form business with equipment storage. No retail sales or other business shall be conducted from the site.
  - B. No manufacturing or concrete mixing shall occur on the site. This prohibition includes the shredding or grinding of any materials.
  - C. One lighted sign, not to exceed 32 square feet per side, shall be permitted.
  - D. The hours of operation shall be limited to 7:00 am through 6:00 pm, Monday through Saturday only.
  - E. Any security lighting shall be screened so that it does not shine on neighboring properties or roadways.
  - F. A fence with landscaping shall be constructed along the perimeter of the site. The fencing and landscaping shall be shown on the Final Site Plan.
  - G. The applicant shall comply with all DelDOT requirements, including any entrance or roadway improvements.
  - H. All stormwater management facilities shall be subject to the review and approval of the Sussex Conservation District.
  - I. As stated by the Applicant, there shall be no dumping or storage of concrete or similar materials on the site. Also, all trucks and equipment shall be cleaned off-site.
  - J. All maintenance of vehicles and equipment shall be performed indoors.
  - K. The Final Site Plan shall clearly show all areas for vehicle equipment storage and parking, and these areas shall be clearly marked on the site itself. There shall not be any parking or storage within the property's setbacks.
  - L. All concrete forms shall be stored in location that is screened from view from neighboring properties and roadways. These storage areas shall be shown on the Final Site Plan.
  - M. Failure to comply with any of these conditions shall be grounds for termination of the Conditional Use Approval.
  - N. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Hopkins and carried unanimously to forward this application to the Sussex County Council with a recommendation that the application be approved for the reasons stated. Motion 3-0.

**C/U 2162 Yellow Metal, LLC**

**An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District and C-1 General Commercial District for a paving construction business with an office and equipment storage to be located on a certain parcel of land lying and being in Georgetown Hundred, Sussex County, containing 39.630 acres, more or less.** The property is lying on the north side of Lewes-Georgetown Highway (Route 9), approximately 0.64 mile west of Gravel Hill Road. 911 Address: 20288 Broadogs Place, Georgetown. Tax Parcel: 135-11.00-31.00.

The Planning Commission discussed the application which has been deferred since January 10, 2019.

Motion by Mr. Hopkins, seconded by Ms. Wingate and carried unanimously to defer action for further consideration. Motion carried 3-0.

**C/Z 1866 Triple B Farms, LLC**

**An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to an I-1 Institutional District for a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 18.3155 acres, more or less.** The property is lying on the northeast corner of Hudson Road and Lewes-Georgetown Highway (Route 9). 911 Address: N/A. Tax Parcel: 235-27.00-11.01.

The Planning Commission discussed the application which has been deferred since January 10, 2019.

Mr. Hopkins moved that the Commission recommend approval of Change of Zone 1866 for Triple B Farms, LLC (now Bayhealth Medical Center as the owner) for a change in zone from AR-1 to I-1 Institutional based on the record made during the public hearing and for the following reasons;

1. This is a change of zone for the new I-1 Zoning District. The I-1 Zoning District has permitted uses that focus on healthcare and institutional uses.
2. The rezoning is consistent with the stated purpose of the I-1 District, which is to allow public, quasi-public and institutional to occur on properties that are compatible with surrounding districts and uses. There are properties nearby that are zoned CR-1 and C-1, and this property is located along Route 9, which is a Major Arterial Roadway. The purpose of the I-1 Zoning and the permitted uses within the I-1 District are consistent with this area.
3. The rezoning will not adversely affect neighboring properties, public facilities, traffic or area roadways.
4. The site is located at an intersection along Route 9, which will provide convenient access to the public uses permitted under I-1 Zone.
5. The property is served by central water and sewer.
6. The rezoning to I-1 promotes the health, safety and general welfare of Sussex County and its present and future residents by providing a convenient location for needed medical office space.
7. Any further development of this site will require a site plan review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Hopkins, seconded by Ms. Wingate and carried unanimously to forward this application to the Sussex County Council with a recommendation that the application be approved for the reasons stated. Motion carried 3-0.

**PUBLIC HEARINGS**

Mr. Robertson described the procedures for public hearings before the Planning and Zoning Commission.

**2018-24 Good Will Farm – Joseph M. and Karen M. Zduriencik and Joel Daniel Gusky**

A cluster subdivision to divide 56.41 acres +/- into 104 single family lots to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County. The properties are lying on the west side of Bayard Road approximately 1,200 feet north of Double Bridges Road. Tax Parcels: 134-18.00-55.00, 134-19.00-5.00 and 6.00. Tax Parcel. AR-1 (Agricultural Residential District).

Ms. Cornwell advised the Commission that submitted into the record were a Site Plan, exhibit booklet, results from the DelDOT Traffic Impact Study (“TIS”), comments from the Sussex Conservation District, Department of Agriculture, Office of the State Fire Marshal, numerous Divisions of DNREC, Sussex County Mapping and Addressing Department, Delaware Electric Cooperative, Office of Drinking Water, Sussex County Public Works Department, Sussex County Department of Engineering Utility Planning Division, and a copy of a letter from the State of Delaware Preliminary Land Use Service (“PLUS”).

The Commission found that Mr. Jeff Clark, with Land Tech, LLC, Mr. Robert Harris, representative of Gulfstream Development, Mr. Jim McCully, with Watershed ECO, Ms. Betty Tustin, with the Traffic Group and Mr. Mike Kobin, Senior Project Manager, with George, Miles and Buhr were present on behalf of the application; that Mr. Clark stated Willow Run is the old name of the subdivision and now it is called Good Will Farm; that the site contains three parcels that total 56.6 acres; that the present zoning for all three parcels is AR-1; that the proposed cluster subdivision is for 104 single family lots with a small community swimming pool, pool house and other amenities; that there are woods on the north side of property that do not appear to be actively managed for silviculture; that in the northeast corner of the property is a telecommunication tower that has been approved by the Sussex County Board of Adjustment in 2008; that on the eastern boundary of the site is single family 1 ½ acre lots; that to the southeast of the property is an active 13-acre farm with a home; that to the south are commercial uses so the south of this site and there is active agricultural land to the west; that the property slopes from the north to the south; that there are ditches where there are 14-foot and 16-foot contours; that the Williams Tax Ditch/Williams Canal bisects the site, which has multiple prongs; that part of the site is served by Tidewater Utility Water Company and the other part is served by Artesian Water Company and there are two options available for connection: that the site is within the Sussex County sewer area; that sewer capacity is available; that the site is located in the Zone X floodplain; that Mr. McCully stated there are two areas of isolated wetlands – one in the north of the site and one in the south of the site that were identified as being waters of the United States; that there are no threatened or endangered species on the site and no habitats identified following a Phase 1 Environmental Survey; that the survey identified that there once was an old oil tank on the site that had leaked; that DNREC had decided it was not a threat to human health or the environment and issued a no further action letter but stated if any development took place on the site, the site would have to be cleaned up; that Mr. Clark stated that the proposed subdivision would be for single-family detached homes only; that there would be one entrance to site and it would align with the intersection; that there would be a 1-acre wet stormwater management pond on the site; that the pond would serve both stormwater management pond purposes and as a visual amenity for the residents, providing an off-site attractive view; that there would be not be any dwellings within 500-feet of the entrance; that the proposed subdivision streets would be private; that only the fronts of lots would be visible, that

there would be no impact to, or realignment of any Tax Ditches or wetlands; that the proposed subdivision allows for half of the existing 10 acres of wooded area to remain; that the tax ditch Right-of-Way would be preserved to maintain water and wildlife access; that there would be active and passive amenities; that there would include 30-foot forested landscape buffer along active agricultural land and 20-foot forest landscape buffer along the non-active agricultural land; that there would be no homes within 50-feet of agricultural proposes or existing residential development; that the proposed subdivision would not include any forested landscape buffers within the tax ditches maintenance buffer strips; that the subdivision does propose trees along the streets and approximately two trees per lot; that sidewalks would be provided on one side of the streets; that there would be walking trails throughout the community and around the community lake; that the lot size exceed the minimum requirements; that the lots exceed up to the adjoining forester buffer boundaries to eliminate irregular shapes of open space; that proposed subdivision would have 25 acres of open space and will preserve 44% of the site; that the HOA would have a professionally-prepared open space management plan that would address pesticides, fertilizers and pest control in addition to species control; that Ms. Tustin stated a TIS was undertaken as required by DelDOT that looked at traffic during the two business hours of the day and other data that was submitted; that the intersections were assessed against national standards, that there would be work undertaken to improve the intersections of Central Avenue, Peppers Corner and Bayard Road; that there would be a 15 second wait length to make turning movements; that the intersection would be straightened; that the applicant would be improving the right turn lane from Bayard Road on to Central Avenue; that Mr. Kobin stated the proposed subdivision would be served by public water and the design would be submitted to Delaware State Fire Marshal Office for review and to the Office of Drinking water; that sanitary sewer service would public and served by Sussex County; that a sanitary sewer capacity evaluation has been undertaken by the County; that the site is in the Miller Creek Sewer District and capacity is available for the site; that the point of connection would be on Bayard Road from an existing 10" force main; that the Meadows at Bayard development, near to the site, would also have to be annexed into the sewer district and it would also serve Janice Court as well, from a request from Sussex County engineering; that there would be a pump station within the development served by gravity sewers; that the stormwater management would comply with the requirements of Sussex Conservation District and the applicant has had an application meeting with them; that there would be four stormwater management facilities on the site; that three of them are 48 hours extended detention wet ponds and one of them is a submerged gravel wetland; that main central pond would become part of the tax ditch system and will form part of the tax ditch easement; that the Applicant has talked with DNREC about the tax ditch system; that the proposed subdivision streets would have open drainage with sidewalks on one side of the streets; that the streets would be super elevated to drain to the ditch on side, with no crown, and that this would ultimately have to be approved by Sussex County Engineering Department; that this approach minimizes the number of driveway culverts, that Mr. Clark stated the Land Use Classification per the 2008 Comprehensive Plan is in a growth area and the recently approved 2018 Comprehensive Plan is in the coastal area; that the cluster development is encouraged; that the proposed subdivision meets both the 2008 and 2018 Comprehensive Plans; that the proposed subdivision design meets or exceeds all Sussex County Zoning Ordinances; that the submitted booklet references Chapter 99-9C and how this is complied with, along with a Public Facility report and an Environment Assessment; that the applicant is

looking to reduce the tax ditch Right-of-Way; that the PLUS response is also included in the exhibit booklet; that the Technical Advisory Committee (“TAC”) comments with the applicant’s response is included in the exhibit booklet; that the County’s Mapping and Addressing Department has approved the name of the subdivision and the street names.

Ms. Wingate stated she had some concerns with the development being within a State Spending Strategies Level 4 area; that she has concerns with the subdivision only having one entrance; that Mr. Clark stated there is no access to Bayard Road due to the access being on a curve; that they would not be changing any alignments, or blocking any drainage to the tax ditches but they will improve and excavate to the original depth of the tax ditches; that there are no homes planned within 500-feet on the entrance side; that on the exiting side the homes are closer; that the proposed subdivision would include a pool and small clubhouse for a smaller development; that there would be walking trails, open space and pocket parks; that the slopes of the street would eliminate half of the driveway pipes; that everyone on the sidewalk side would be able to drive into their garages and the other side would have swales with driveway pipes for each driveway; that the bus stop would only be constructed per DelDOT requirements as part of their review of the proposed entrance; that there would be no parking available to wait for the buses; that the roads would be super-elevated and would comply with all drainage requirements; that the tax ditch Right-of Way is narrow on one side which is 16-feet and the other side is 20-feet; that they are also able to take some of the buffer and increasing the Right-of-Way to 40-feet up to the line; that based on the Right-of-Way most of the it would be reduced; and that lot 104 is a larger lot and it fronts on Bayard Road and it is separate from the rest of the subdivision.

The Commission found that Mr. Tom Ford spoke in favor of the application; that Mr. Ford stated he has lived in this location for 38 years; that he stated he appreciates the land plan and the proposed improvements to the intersection; that the straightening of the road would be an improvement to overall traffic flow and safety of the area; and that he has concerns with any proposed culverts within the site, and that any culverts along Bayard Road must be properly sized.

The Commission found that Mr. Kyle McCabe spoke in opposition of the application; that he owns the 76-acre property to the north, that Mr. McCabe stated he has concerns with traffic and safety; that the speed limit is 50 mph, that there are no bicycle lanes and no sidewalks, that the existing ditches recently overflowed during heavy rain, that he works to protect the wildlife in the area as part of an environmental program, that he has concerns about headlights, light pollution, noise pollution and potential for trespassers; that he would like to see a buffer between the lots; that he has concerns with the ditches overflowing and density in the area; that there needs to sidewalks, bike paths and wider shoulders along the road due to the potential for existing safety problems to be exacerbated; that he has concerns with the density of the project and that he has concerns with potential impacts on hunting and wildlife on his land, and that many young people in the County have enjoyed fishing and hunting activities on his land in the past.

At the conclusion of the public hearings, the Commission discussed this application.

Motion by Ms. Wingate, seconded by Mr. Hopkins and carried unanimously to defer action for

further consideration. Motion carried 3-0.

**C/U 2155 Stockley Materials, LLC**

**An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for a borrow pit to be located on a certain parcel of land lying and being in Nanticoke Hundred, Sussex County, containing 158.74 acres, more or less.** The property is lying on the southwest side of Seashore Highway (Route 18), approximately 0.72 mile southeast of Gravelly Branch Road. 911 Address: N/A. Tax Parcels: 231-6.00-21.00 and 22.01.

Ms. Cornwell advised the Commission that submitted into the record were a staff analysis, exhibit booklet, Site Plan, results from the DelDOT Service Level Evaluation response indicating that a Traffic Impact Study (“TIS”) was not required, comments from the Sussex Conservation District, Sussex County Engineering Department of Utility Planning Division.

The Commission found that Mr. David Hutt, Attorney with Morris, James, Wilson, Halbrook and Bayard, LLP, Mr. Ken Adams, Principal of Stockley Materials, LLC, Mr. Mark Davidson with Pennoni Associates and Mr. Alan Decktor, with Pennoni Associates were present on behalf of the application; Mr. Hutt stated the property is comprised of two tax parcels; that one of the parcels is a 50-foot wide strip of land and the other parcel is a 158 acre parcel; that the land is zoned AR-1; that the parcel is identified as a low-density area in both Comprehensive Plans; that the parcel is located in the State Spending Strategies Level 4; that Mr. Davidson stated that the property is bordered on the north side with eight poultry houses and some residential lots; that to the west of the property are wooded lands owned by the State of Delaware; that to the south of the property are heavily wooded lands and agricultural lands that are within farmland protection; that on the east of the property is woodlands and farmlands that also comprise protected farmland; that the property is approximately 158.7 acres, that the site contains 28 acres of woods; that the site contains approximately 6.7 acres of wetlands; that the site is currently being used for agricultural purposes; that the proposed application is for a borrow pit for the processes of removal of sand, gravel and stone to be used in construction for private and public work projects; that the proposed use would comply with the Sussex County Ordinance 115-172B which outlines the special requirements for a borrow bit; that there would be no off-site material brought to the site; that the proposed access road would be on parcel 22.01 which has a width of 50’; that the access road is approximately 1,450 linear feet back to the proposed pit and it is proposed to be paved to help with dust and air pollution; that the internal roads within the site would also be paved; that a small weighing scale and scale house would be provided; that there would be no fuel tanks stored on the site; that there would be fuel trucks that would come to the site and provide fuel to the equipment used as part of the excavation process; that there would be additional fencing, berms and entrance gates that would be installed; that there would be a gate off of the public road and it would be positioned far back enough so that the trucks would not have to park on the public road or in the Right-of-Way in order to open the gate; that the applicant does have the necessary equipment and experience to provide for dust control/suppression, that water trucks would provide for dust control and sweepers would be used to keep sediment off the roads for the trucks leaving the site; that the site would be equipped with ‘white sound’ alarms within the danger zone that would adjust to the ambient sound level with a real-speech warning system to workers which would eliminate potential



noise and nuisance issues; that the applicant's equipment is already equipped with these types of warning devices; that the property is not in a floodplain area; that the site is more than 50-feet from any property lines; that a 4-foot high berm would be placed around the entire perimeter of the proposed borrow pit; that the proposed pit would have three-to-one side slopes down to a 10' level bench; that below the water surface the proposed side slopes are two-to-one going down to a depth of 65-feet; that the water table is at approximately 5-feet; that soil data has been provided in the Exhibit Book, that the types of materials available within the site meet several of the types of materials required by DelDOT and the Maryland State Highway departments construction requirements; that 14 to 15 acres of trees are to remain outside of the pit area; that the proposed pit is 112 acres in size after full excavations; that there are wetlands on the site and they would not be disturbed; that there would be a 50-foot buffer around the wetlands; that there are no endangered species located on the site; that the applicant is proposing a 100-foot buffer behind the four residential lots to the north of the site; that the closest house to the proposed pit is 700-feet away and the proposed design would exceed the 700-foot requirement; that, following full excavation and subsequent remediation, the pit would remain as a pond/ environmental site for fish and other wildlife with 46 acres of open space with existing woods; all other areas would likely fill in with vegetation; that all entrances and intersections to the proposed site would be in accordance with all of DelDOT requirements; that the stormwater management system would exceed DNREC requirements and would use Best Management Practices; that the proposed Conditional Use would not have an impact of streets and that DelDOT did not require a TIS to be undertaken by the Applicant; that the site is served by a Principal Arterial road; that Route 18 is an easy access to travel to Maryland and elsewhere Delaware; that the proposed pit would use the existing irrigation well that is on-site; that there would be no on-site wastewater use and they would use porta-potties; that the borrow pit is essentially needed to keep up with the energy and construction material demand of the community; that the Applicant would install a dry hydrant for fire protection; that Mr. Hutt stated that aggregates such as crushed stone and gravel are minerals that make up the building blocks that are used for construction which is a fundamental need of industry; that the United States Geological Group states that 90% of aggregates are used within 30 to 50 miles of their place of extraction due to expense of transporting them; that Sussex County has a lot of development being undertaken and therefore there is a need of more aggregates; that this is not just for private development but also for road improvements; that all of this is public and semi-public in the nature of use; that there are proposed conditions submitted in the exhibit booklet; that the proposed hours of operation would occur from 6:00 am to 6:00 pm, Monday through Friday and 6:00 am to 2:00 pm on Saturday with no Sunday activities; that there would be an unlit safety sign to identify the site; that the site is located on a principal arterial road;

Mr. Hopkins asked whether any water would leave the site and where the gate would be. Mr. Davidson stated that no water would leave the site and that the gate would be approximately 60-feet to 70-feet (two trucks) back from the main road; that a dredge operation would take place with an electric dredge; that the electric dredge makes very little noise and the staging area would be located behind the poultry facilities, away from dwellings; that Mr. Adams stated the electric dredge is no different than a diesel powered equipment; that is zero nuisance with little noise; and that when the proposed project is in full effect there would be an average of 100 trips per day associated with vehicles and equipment.

The Commission found that no one spoke in favor of or in opposition to the application.

At the conclusion of the public hearing, the Commission discussed this application.

Motion by Mr. Hopkins, seconded by Ms. Wingate and carried unanimously to defer action for further consideration. Motion carried 3-0.

**C/U 2157 Country Lawn Care & Maintenance, LLC (C/O Gerald and Stephania Dougherty)**  
**An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for a landscaping business to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 4.26 acres, more or less.** The property is lying on the north side of Hollymount Road, approximately 0.42 mile east of Beaver Dam Road. 911 Address: 30435 Hollymount Road, Harbeson. Tax Parcel: 234-11.00-78.07.

Ms. Cornwell advised the Commission that submitted into the record is a staff analysis, exhibit booklet, Site Plan, comments from the DelDOT Service Level Evaluation request confirming that a Traffic Impact Study (“TIS”) was not required, comments from the Sussex Conservation District and comments from the Sussex County Engineering Department of Utility Planning Division.

The Commission found that Ms. Shannon Carmean Burton, Attorney with Sergovic, Carmean, Weidman, McCartney and Owens, Gerald Dougherty and Stephania Dougherty, owners of Country Lawn Care & Maintenance, LLC and Alan Decktor, Pennoni Associates were present on behalf the application; Ms. Burton stated the exhibit booklet includes a copy of the application, Conditional Use Site Plan, DelDOT response letter, letters in support of the application, and photos of the site; that the application is in compliance with the Zoning Code and the Comprehensive Plan; that the Applicants have owned their lawn and landscape business for nine years and had purchased the property with the intent to reside at the property but also to operate their landscaping business from the property which they have done for the past 2 ½ years; that the previous owners of the property had operated a landscaping business from the property during their ownership; that the applicants were unaware that the activities required a Conditional Use permit until a violation notice was received from Sussex County, that the proposed use of the property is consistent with the purposes and goals of the Sussex County Comprehensive Plan; that the property contains approximately 4.26 acres of land; that the property is zoned AR-1; that this proposed use is similar to other Conditional Uses within the AR-1 Zoning District; that the property is located in the low-density area; that the property is located in an area of agricultural uses and single-family residents which would allow the applicants to provide their services to nearby residents; that the applicants currently have 10 employees; that hours of operation occur from 7:00 am to 7:00 pm, Monday through Friday and that these hours may be extended for snow removal or responding to other emergency purposes; that there would only be one person on the site all day during business hours; that the office is not open to the public; that all the equipment repairs would be undertaken off-site; that there are no mechanics based on the site; that the only routine maintenance would be undertaken on-site such as the changing of the blades; that the applicant does not stock bulk materials and they use bag materials only and any waste is disposed of in a dumpster located behind

the dwelling; that there is a natural forested buffer that surrounds the property and also a privacy fence around the side and rear of the property; that Mr. Dougherty stated that the job is important for his family; that the Applicant's future plan is to buy commercial parcel; that Mr. Decktor stated the site is adjacent to residential properties that are zoned AR-1; that the lot to the west of this site is a vacant wooded lot and to the east is a single-family dwelling; that to the east of that property is the new entrance to Spring Breeze Subdivision and it extends behind this site; that the property is served by existing well and septic; that the employees would be able to use a porta-potty; that the property does drop down in the rear where the woods are located; that the house is located 260-feet from the road; that there is a detached garage on the site; that the trucks and trailers are stored in the rear of the property with a lot of smaller sheds; that the sheds would eventually be removed and the applicants would like to expand the detached garage for storage; that the property is outside of the floodplain; that Ms. Burton stated that the Applicant has received letters in support of the application; that the proposed Conditional Use would not have any adverse impact on traffic; that DelDOT did not recommend that a TIS be performed; that proposed use would meet the landscaping needs of Sussex County.

Mr. Hopkins asked about the type of landscaping activities undertaken, and the history of the site.

Mr. Dougherty stated he does not undertake any tree services for trees over 6-feet in height; that there would not be a need to bring any stumps back to the site and that he would not be grinding any stumps at all; that the previous owner of the property had a lawn mowing business; that the Applicant has been in business for seven years and his number of employees/contractors has reduced from 21 to 10 people; that the Applicant is okay with the size of employees that he currently has now; that the Applicant is not looking to increase the size of the site he currently has now; that the neighbor to the right of the site is okay with the Conditional Use; that they have 13 construction vehicles; that Mr. Decktor stated the construction vehicles are standard pick-up trucks with trailers; that Mr. Dougherty stated a few of the employees do take the pick-up trucks home; that the Applicant stated you cannot see the site from the road; that when there buffer grows, it would provide a buffer between his own home and the business; that the hours of operation are 7:00 am to 7:00 pm; that there would be no weekend hours; that the Applicant would be careful about the back-up alarms used in the construction equipment; that the Applicant does not want a sign; that they do provide hardscape services; that there would be no materials stored on the site; that the employees arrive in the morning to pick up the trucks and return in the afternoon; and that the previous owner owned the house for 10 years and the applicant was not sure how long the previous business was there.

The Commission found that Mr. Steve Castiglione, Mr. Christopher Warren, and Mr. Corey Henry spoke in favor of the application; that Mr. Castiglione stated he works for Country Lawn Care and his job depends on the Conditional Use approval; that they provide high-end landscaping and hardscaping services; that Mr. Warren stated he is an employee with Country Lawn Care; that there is a set of core values at the business; that he enjoys his job; Mr. Henry stated he is an employee for Country Lawn Care; and that it is nice that the house is right there where the business located if help is needed loading equipment.

The Commission found that Mr. James Spellman, Mr. Albert Stanley and Mr. John Furbush spoke in opposition of the application; that Mr. Spellman owns the vacant lot that is adjacent to the site; that the business has been operating for three years; that the Conditional Use application has been submitted due to the Applicant having been in violation of the restrictions of AR-1 Zoning Code; that the Conditional Use request was submitted after his complaint; that the owner of Country Lawn Care should not be granted the Conditional Use sought; that the owners should have known that they needed a Conditional Use Permit beforehand; that the applicant is now seeking to obtain a Conditional Use for the site after the commencement of the use; that this is not consistent with the purpose of the AR-1 zoning; that the AR-1 zoning is to provide for a full range of agricultural activities, protect agricultural lands and that, in Mr. Spellman's view, the proposed use is not consistent with the definition of agriculture as per Delaware State law, as the use does not involve activities relating to the production or sale of food useful to humans; that the proposed Conditional Use would have a depreciating value of his land; that this use is not safe for the environment, health impact of people and for the land; that the applicant should find a commercial zoned tract of land for his business; that there are private covenants on the lot relating to commercial activities; that this business results in Mr. Spellman's inability to sell his vacant lot; that there was a business operating on the parcel prior to the current owners; that Mr. Spellman is concerned with potential contaminants, including sprays weed-killers, and pesticides being used, and the potential for harm to human health, and potential harm to the aquifer; that the siting of commercial uses adjacent to residential uses upsets the current balance; that Mr. Stanley stated he owns property two lots away from this site; that he built his home four years ago in a wooded lot; that there are deed restrictions applying to his property and to the adjoining parcels; that he has concerns with noise and traffic including potential back-up alarms; that he can see the house and the mechanical repairs through his woods; that he believes that there was no evidence of a prior business being undertaken on the site.

Ms. Burton stated that there are no restrictions in the applicant's deeds and the restricted covenants were not provided to the applicant at the time of closing; that the prior deed does have covenants; that the enforceability of the covenants would depend on the chain of title; that the covenants have not been enforced and there are other lot owners in the vicinity that have items (walls, fences, etc.) that are not in compliance with the covenants; that there is no mechanism to amend the covenants; that the applicant has taken measures to amend the covenants; that the applicant has reached out to adjoining landowners in relation to this.

Ms. Wingate asked the applicant about whether dump trucks have been accessing the site. Mr. Dougherty stated that he does not have any dump trucks and that the dump trucks observed/heard by neighbors are associated the Spring Breeze development behind his lot and the associated tree removal; that none of his trucks have tail gates.

Mr. Furbush stated the 21 lots were originally developed by a single developer and that all the lots are restricted to residential use; that if the Conditional Use is approved the deed restrictions would be ignored and this would be detrimental to the other 20 owners within the development; that there is no active Home Owners Association ("HOA"); that they have never needed a HOA; that the previous owner of the applicant's lot owned one riding mower, and that this should not be

considered as a commercial use; and that there is no commercial use elsewhere on the road and that he believes that this is the wrong location for a commercial use; that the proposed conditional use does not provide a benefit to other lot owners.

At the conclusion of the public hearing, the Commission discussed this application.

Motion by Ms. Wingate, seconded by Mr. Hopkins and carried unanimously to defer action for further consideration and to leave the record open to allow the applicant to submit the requested information in relation to the deed restrictions for the property. Motion carried 3-0.

**C/Z 1870 Coroc/Rehoboth III, LLC**

**An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a C-3 Heavy Commercial District for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 10.001 acres, more or less.** The property is lying on the north side of Holland Glade Road, approximately 575 ft. east of Coastal Highway (Route 1). 911 Address: N/A. Tax Parcel: 334-13.00-325.36.

Ms. Cornwell advised the Commission that submitted into the record were a staff analysis and an exhibit booklet, Site Plan, comments from Sussex Conservation District, result from the DelDOT Service Level Evaluation Request, and Sussex County Engineering Department of Utility Planning Division.

The Commission found that Mr. Jim Fuqua, Attorney Fuqua, Willard, Stevens and Schab, Mr. Charles Worsham, and Mr. Ring Lardner, with Davis, Bowen and Friedel were present on behalf of the application; Mr. Fuqua stated this is an application to rezone a 10 acre parcel from AR-1 to C-3; that the parcel is located on the northwest side of Holland Glade Road and north of Route 1; that the parcel is adjacent to the rear of commercially zoned parcels and it is the Tanger Seaside Outlets Center; that the land is in front of an existing 25 acre parcel which is zoned C-1 and the outlet center has been in operation since the 1990's; that all the adjacent land is zoned C-1; that the rear of the C-1 uses is an area of CR-1 zoning that was rezoned in 2009; that this parcel is under construction; that there is a strip of land to the rear of the CR-1 parcel that is owned by the State of Delaware, and the next parcel contains a church; that the land to the rear of this parcel is also lands owned by the State of Delaware with a trail; that the parcel does contain three stormwater ponds and some over flow parking for connection to the Breakwater Trail and that the applicant will continue to permit access to the trail; that the parcel would be served by central water proved by Tidewater Utilities and central sewer would be provided by Sussex County; that the parcel would have a new access off of Holland Glade Road; that the entrance would be designed and constructed in accordance with DelDOT requirements and that they would determine whether a TIS or Traffic Operational Analysis ("TOA") would be required when they review the site plan showing the entrance; that DelDOT may potentially require a full signalized intersection at the intersection of Holland Glade Road and US Route 1; that this site would also have access by way of the Seaside Outlets which is the main US Route 1 entrance to the existing outlet center; that DelDOT would require the normal Right-of-Way dedications; that the existing outlet center has inter-connectivity with the property to the north which contains a K-Mart shopping center and that motorists can continue from that shopping center to the nearby 'Giant' Store; that the

stormwater management system would be designed to use Best Management Practices; that there are three existing stormwater ponds on the site and they would most likely be expanded to accommodate any potential increases in stormwater; that there are no Federal or State wetlands on the site; that the site is located in the zone X floodplain; that there are no threatened or endangered species located on the site; that the State Spending Strategies identifies this property as being within a Level 2 area; that the Land Use Classification per the Comprehensive Plan is in the Environmentally Sensitive Developing Area which is a growth area and that the site is located within the highway commercial growth area; that the outlet center does have access to a principal arterial highway and is near existing shopping centers; that this is consistent with the 2008 Comprehensive Plan and is also consistent with the proposed 2018 Comprehensive Plan; that this consistent with the purpose of the C-3 district; that the following is permitted in the C-3 district is for retail, hotels, offices and etc.; that the site could be a potential hotel; that there are no nearby residential uses; and that residential uses are not appropriate for this area.

The Commission found that no one wished to speak in favor of or in opposition to the application.

At the conclusion of the public hearings, the Commission discussed this application.

Motion by Mr. Hopkins, seconded by Ms. Wingate and carried unanimously to defer action for further consideration. Motion carried 3-0.

## OTHER BUSINESS

### **2018-14 Lands of Shockley**

#### Final Subdivision Plan

Ms. Norwood advised the Commission that this is a Final Subdivision Plan for the creation of one lot from a larger parcel measuring 57.7 acres +/- at the end of an existing road, Edgewood Avenue, within the Sussex Estates Subdivision. While this new parcel will not be a part of the Sussex Estates Subdivision it will have access via Edgewood Avenue. Staff are in receipt of all agency approvals. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 232-6.00-63.00.

Motion by Mr. Hopkins, seconded by Ms. Wingate and carried unanimously to approve the Final Subdivision Plan. Motion carried 3-0.

### **Canal Corkran, LLC. (CZ 1852)**

#### Final Site Plan

Ms. Norwood advised the Commission that this is a Final Subdivision Plan for the creation of eight lots out of two lots that are part of the Canal Corkran Subdivision. On July 26, 2018, Planning Commission voted to recommend approval of the Change of Zone application. On August 14, 2018, County Council voted to approve Change of Zone 1852 with the addition of two conditions for the new lots regarding the wetlands contained on the new parcels. Staff are in receipt of all agency approvals. Zoning: MR (Medium Residential District). Tax Parcels: 334-13.00-1318.00, 1319.00 and 1320.00.

Motion by Ms. Wingate, seconded by Mr. Hopkins and carried unanimously to approve the Final Site Plan. Motion carried 3-0.

**2017-03 Majestic Meadows (FKA River Rock Glen)**

Revised Subdivision Plan

Mr. Whitehouse advised the Commission that this is a Revised Subdivision Plan for a 26-single-family lot subdivision. On July 12, 2018, the Commission granted Revised Subdivision Plan approval for this subdivision, showing the removal of the sidewalk on one side of the street. The layout of the stormwater management areas and the layout of Lot #19 has since been revised to address comments from Sussex Conservation District. The Revised Subdivision Plan complies with the Zoning and Subdivision Codes and all conditions of approval. Staff are in receipt of all required agency approvals in relation to the changes. Zoning: AR-1 (Agricultural Residential Zoning District). Tax Parcel: 235-22.00-19.00.

Motion by Mr. Hopkins, seconded by Ms. Wingate and carried unanimously to approve the Revised Subdivision Plan. Motion carried 3-0.

**2004-17 The Villages at Red Mill Pond South**

Revised Subdivision Plan

Mr. Whitehouse advised the Commission that this is a Revised Final Subdivision Plan for the Villages at Red Mill Pond South. The plan was originally approved by the Planning & Zoning Commission on March 20, 2018. The Record Plan is being revised to reflect the addition of a landscape plan and updated entrance. When the utility provider was expanding along Route 9, a utility pole was placed in the location of where the proposed entrance would be, and the plans had to be subsequently amended. The plan complies with the Zoning and Subdivision Code and all Conditions of Approval. Staff are in receipt of all agency approvals. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 334-5.00-170.00.

Motion by Ms. Wingate, seconded by Mr. Hopkins and carried unanimously to approve the Revised Subdivision Plan. Motion carried 3-0.

**S-18-39 Route 24 CJ, LLC/Colonial Oaks, LLC**

Revised Site Plan

Mr. Whitehouse advised the Commission that this is a Revised Site Plan for a 104-room Hotel to be located on John J. Williams Highway. The footprint of the hotel has been revised with the addition of deluxe rooms forcing the building, adjacent lot lines and parking east on the site to maintain the fire lane on the west side of the building. A note has also been added and the parking in the front is shown so that the parking would be provided when deemed necessary by the owner. An additional entrance has also been added off Route 24. The previous site plan had been given preliminary approval by Planning Commission on May 10, 2018, with Final by Staff subject to the receipt of all agency approvals. Zoning: C-1 (General Commercial District). Tax Parcels: 334-12.00-57.03, 57.07 & 57.08. Staff are awaiting agency approvals.

Motion by Mr. Hopkins, seconded by Ms. Wingate and carried unanimously to approve the Revised Site Plan with final approval to staff upon receipt of all agency approvals. Motion carried 3-0.

**S-18-71 Baywood Garden Villas**

Preliminary Site Plan

Mr. Whitehouse advised the Commission that this is a Preliminary Site Plan for a 209-unit multi-family development located on a 17.48 ac parcel accessed from Long Neck Road (Route 23), for a density of 11.96 DU/AC. The site plan is for Phase 1 of a larger development, with a future phase shown as being located to the north of the 209 units proposed. The site plan shows the 209 units split into 10 separate buildings with a total number of 406 parking spaces shown to be provided, with 35 of the parking spaces being contained within single-story garage structures. The Preliminary Site Plan complies with the Zoning Code. The Zoning District is C-1 (General Commercial). Tax Parcels: 234-23.00-273.05, 270.00 (part of).

Motion by Ms. Wingate, seconded by Mr. Hopkins and carried unanimously to approve Preliminary Site Plan with final approval to staff upon receipt of all agency approvals. Motion carried 3-0.

#### **S-18-88 Beebe Healthcare - Rehoboth**

##### **Preliminary Site Plan**

Mr. Whitehouse advised the Commission that this is a Preliminary Site Plan for a four-story, 135,000 square foot surgical hospital with parking and other site improvements located off Warrington Road. Zoning: I-1(Institutional District). The Preliminary Site Plan complies with the Zoning Code. Tax Parcel: 334-12.00-125.00. Staff are awaiting agency approvals.

Motion by Mr. Hopkins, seconded by Ms. Wingate and carried unanimously to approve the Preliminary Site Plan with final to staff upon receipt of all agency approvals. Motion carried 3-0.

#### **S-18-90 Cellco DOV Hollyville**

##### **Preliminary Site Plan**

Ms. Norwood advised the Commission that this is a Preliminary Site Plan for the construction of a 151' monopole cell tower and a 50'x 60' fenced in telecommunications compound located at 22602 Harbeson Road. A Special Use Exception (12201) was granted for the use and structure at their meeting on September 17, 2018. The site will access the facility through an existing entrance located on Tax Parcel 234-10.00-70.07. The Preliminary Site Plan complies with all zoning requirements. Tax Parcel: 234-10.00-70.06 & 234-10.00-70.07. Zoning: C-1 (General Commercial Zoning District).

Motion by Mr. Hopkins, seconded by Ms. Wingate and carried unanimously to approve the Preliminary Site Plan with final to staff upon receipt of all agency approvals. Motion carried 3-0.

Meeting adjourned at 9:13 p.m.